

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0705, State of New Hampshire v. William Dodge, the court on March 13, 2007, issued the following order:

The defendant, William Dodge, appeals his convictions on several sexual assault and indecent exposure and lewdness charges. He argues that the trial court erred in admitting the entire videotape (tape) of the victim's interview with an investigator. He contends that because the State introduced the victim's inconsistent statement to her mother, it could not respond to that statement by introducing otherwise inadmissible evidence. He also argues that because the prior consistent and inconsistent statements occurred in different conversations, the doctrine permitting introduction of prior consistent statements does not apply. Finally, he argues that the trial court erred in admitting the entire tape. We affirm.

The admissibility of evidence is generally within the trial court's discretion. State v. Gibson, 153 N.H. 454, 457 (2006). Because the trial court is in the best position to gauge the prejudicial impact of particular testimony, we will not upset its ruling unless it was an unsustainable exercise of discretion. *Id.*

In reaching its decision to admit the tape, the trial court found, "There have been numerous references by the defense to the inconsistencies between what [the victim] told [an investigator] and told her mother." Prior to reviewing the tape, the jury was instructed not to consider anything for the truth of the statements but rather to "only use the statements made on the videotape for the purposes of helping you assess the credibility of the complaining witness based on any statements in the interview which may be consistent or inconsistent with her testimony yesterday afternoon and this morning."

Having reviewed the record before us, we find no error in the trial court's ruling. Contrary to the defendant's assertion, the transcript of the tape was used by defense counsel to demonstrate inconsistencies between the victim's out of court statements and her trial testimony. The videotape was relatively brief and its admission was accompanied by a limiting instruction. We therefore find no error in the trial court's decision to admit it in its entirety. See State v. Rogan, 151 N.H. 629, 634 (2005).

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox
Clerk**